



**TO:** All DWD Unemployment Insurance Staff  
Marion County Workforce Investment Board Director  
Regional Operators  
Directors of Operations for Northern and Southern Indiana  
All WorkOne Staff  
Policy and Field Operations Staff

**FROM:** Teresa L. Voors *TLV*  
Commissioner, Indiana Department of Workforce Development

**THROUGH:** Scott B. Sanders, Chief Financial Officer *AS*

**DATE:** February 11, 2008

**SUBJECT:** DWD Policy 2007-23  
Indiana Department of Workforce Development's Definition and Treatment of  
Certain Income Payments for Unemployment Insurance Benefit Purposes

### **Purpose**

To issue the Indiana Department of Workforce Development's (DWD) policy for defining and allocating certain types of income, which may be deductible pursuant to Indiana Code §22-4-5-1 and §22-4-5-2.

### **Content**

This policy clarifies DWD's approach to applying Indiana law with respect to defining and allocating certain income received by individuals filing for unemployment insurance (UI) benefits.

### **General Introduction**

The purpose of UI, as defined in §22-4-1-1, is to ease the burden of economic insecurity due to unemployment. UI benefit payments are intended to provide an individual with a temporary subsidy following a job loss through no fault of his or her own.

Indiana law makes certain income deductible from weekly UI benefit payments. For example, severance or dismissal payments are deductible, but bonus payments are not (IC §22-4-5-1). The deductible income statute, IC §22-4-5-1, does not define severance or bonus payments; therefore, DWD will apply existing case law to determine the nature of the payment for UI purposes. In doing so, DWD will look at the substance of the payment, regardless of what the payment is named or how the employer requests the payment be treated (*Gurnik v. Lee*, 587 N.E.2d 706, 709 (Ind. Ct. App. 1992)).

**Definition of Bonus Payment**

Bonus payments are not deductible from UI benefits (IC §22-4-5-1). In general, Indiana courts have defined a bonus as a "gratuity" that the recipient "has no right to demand" (*Morton v. E-Z Rake, Inc.*, 397 N.E.2d 609, 613 (Ind. Ct. App. 1979)).

The Commissioner of DWD, or the Commissioner's designee, shall consider all relevant information to determine whether income received by a claimant is deductible from that claimant's weekly UI benefit amount. DWD will give the weight it deems appropriate to each factor considered in its determination.

***Factors indicating payment should be treated as a bonus may include, but are not limited to:***

- Employer is not contractually obligated to make the payment
- Payment is based on the financial success of the employer
- Payment is tied to employee's performance
- Payment is distributed equally to all similarly situation employees
- Payment is in excess of employee's ordinary earnings
- Payment would have been made regardless of whether or not employee separated from employment
- Employer has a history of making this type of payment to employees who are not separated from employment.

**Definition of Severance or Dismissal Payment**

Severance or dismissal payments are deductible from UI benefits (IC §22-4-5-1). Typically, severance or dismissal pay is a payment paid at the time of or following separation from employment and may be paid as a result of the separation. Such payment may be paid pursuant to an agreement between or among the employer, employees, and/or union. Severance or dismissal pay may be made for the purpose of easing economic hardship caused by job loss.

The Commissioner of DWD, or the Commissioner's designee, shall consider all relevant information to determine whether income received by a claimant is deductible from that claimant's weekly UI benefit amount. DWD will give the weight it deems appropriate to each factor considered in its determination. DWD will presume payments in excess of an employee's ordinary earnings that are paid at or near the time of separation are severance or dismissal payments. The claimant shall bear the burden of proving that such payment is not deductible.

***Factors indicating payment should be treated as severance or dismissal pay may include, but are not limited to:***

- Payment is made as the result of permanent separation from employer
- Payment is based on seniority, years of service, or wages earned during years of service
- Payment is made pursuant to an agreement between or among the employer, employees, and/or union
- Payment is made for purposes of easing economic hardship caused by job loss
- Payment is not made to employees who remain employed
- Employer does not have a history of paying this type of payment to employees who are not separated



**Allocation of Deductible Income Payments**

Pursuant to IC §22-4-5-2, severance or dismissal pay must be “allocated to the period of time for which such payment is made immediately following the date of separation.” Therefore, DWD will deduct the allocated amount in each week for which the payment was made (*Schenley Distillers, Inc. v. Review Board of Indiana Employment Sec. Div.*, 123 Ind. App. 508 (Ind. Ct. App. 1953)). DWD will allocate the payment over a period of week(s) immediately following the separation and base the allocation on the claimant’s hourly wage.

**Treatment of Separation Agreements**

Agreements signed may include a combination of deductible and non-deductible income payments. Buyout payments may be treated as bonuses, severance payments, or a combination of different types of deductible and/or non-deductible income payments. DWD will determine what type of income each buyout payment constitutes based on the factors set forth in this policy.

**Review Date**

September 1, 2009

**Ownership**

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**Effective Date**

Immediately

**Action**

All DWD Unemployment Insurance Staff shall follow this policy’s instructions in determining certain income payments for Unemployment Insurance benefits purposes. Questions regarding this policy should be addressed to Sarah Dixon.